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Saint Alphonsus Diversified Care v. MRI Associates Cross Appellant's Reply Brief Dckt. 40012

IN THE SUPREME COURT OF IDAHO

SAINT ALPHONSUS DIVERSIFIED CARE, INC., an Idaho nonprofit corporation, *Plaintiff-Appellant,* v. MRI ASSOCIATES, LLP, an Idaho limited liability partnership, *Defendant-Respondent.*	
MRI ASSOCIATES, LLP, an Idaho limited liability partnership; MRI Limited, an Idaho limited partnership; MRI MOBILE LIMITED, an Idaho limited partnership, *CounterClaimants-Respondents-CrossAppellants.* v. SAINT ALPHONSUS DIVERSIFIED CARE, INC., an Idaho nonprofit corporation; SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC., *CounterDefendants-Appellants-CrossRespondents.*	Supreme Court Docket No. 40012-2012

CROSS-APPELLANTS' REPLY BRIEF

Cross-Appeal from the District Court of the Fourth Judicial District for Ada County
Honorable Michael Wetherell, District Judge, Presiding

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I. ST. AL'S ARGUMENTS RELATED TO THE DEPARTING PARTNER SHARE ARE CONFUSING AND CONTRARY TO LAW.

St. Al's begins its brief by discussing its departing partner share. St. Al's initially tries to short-circuit the analysis by erroneously contending that this Court is powerless to consider this issue since it is *res judicata*. Cross-Respondents' Brief at 1-2. In a nutshell, St. Al's argues that MRIA did not appeal Judge McLaughlin's previous finding related to St. Al's departing partner share, and therefore is barred from doing so now by the law-of-the-case doctrine. This position ignores the nature of what MRIA is contending. Its sole argument here is that Judge McLaughlin's holding related to Articles 6.1 and 6.2 of the Partnership Agreement was implicitly reversed by the *SADC* decision. *See* 148 Idaho 479, 224 P.3d 1068, 1074-80 (2009). Obviously, MRIA could not have pointed out the inconsistency between Judge McLaughlin's holding and the *SADC* decision until this Court did, in fact, issue the *SADC* decision.

Indeed, because the issue here is whether *SADC* impliedly overruled Judge McLaughlin's ruling, it does not make any legal difference whether MRIA could or should have brought the issue up in the previous trial or appeal, since an implicit reversal, standing alone, is a well recognized exception to the law of the case doctrine. As one appellate court noted:

> [W]e implicitly reversed the underlying basis of the decision striking the affirmative defense when we held that the Quatemans were bound to provide those documents. Thus, this case falls within the recognized exception to the law-of-the-case doctrine that applies where a higher reviewing court, subsequent to the lower court's decision, makes a contrary ruling on the same issue.

Burke v. Quateman, 2012 WL 6962865, *9 (Ill. App. 1 Dist. 2012) (emphasis added); *see also, e.g., Atlantic Mut. Ins. v. Palisades Safety & Ins.*, 2003 WL 22100231, *4 (N.J. Super. A.D.

2003) ("...the earlier finding was implicitly reversed. The "law of the case doctrine" did not apply...") (emphasis added); *see also State v. Hosey*, 134 Idaho 883, 11 P.3d 1101, 1104 (2000) ("The general rule is that, on remand, a trial court has authority to take actions it is specifically directed to take, or those which are subsidiary to the actions directed by the appellate court.") (emphasis added). Put more simply, if this Court finds that its ruling in *SADC* did, in fact, have the effect of reversing Judge McLaughlin's departing-partnership-share decision, then the law-of-the-case doctrine is inapposite—making the timeliness of the argument entirely moot.

St. Al's next engages in some confusing mental gymnastics in order to convince the Court of the facially-dubious argument that Articles 6.1 and 6.2 of the Partnership Agreement allow for dissociation for any reason, but then are somehow restrictive when it comes to the buyout amount, in spite of no explicit language in the contract indicating as much. St. Al's cardinal misstatement in this regard is that "Judge McLaughlin's buyout decision did not depend at all on his wrongful dissociation ruling." Cross-Respondents' Brief at 3. As it turns out, Judge McLaughlin's opinion repeatedly states the exact opposite. A review of his decision and the contract he was interpreting is accordingly warranted.

The language of the contract as it relates to the buyout is actually quite expansive, when read alone: "Unless otherwise agreed, the withdrawing Hospital Partner shall only be entitled to receive for its interest in the Partnership an amount which is equal to the balance of such Hospital Partner's capital account at the time of withdrawal." Ex. 4023, § 6.1. Notably, there is nothing in this sentence referring to the reason for the withdrawal; left to itself, this sentence would apply the buyout to any withdrawal any partner might effectuate for any reason.

But Judge McLaughlin decided that he could not read this language into every withdrawal because it was found in the context of Article 6.1, which he believed spoke only to "rightful" withdrawal for a handful of medical and theological reasons. 2007 R. 2309-11. Judge McLaughlin accordingly held that because Article 6.1 only allowed for a "rightful" withdrawal for these specific medical and theological reasons, the buyout should be limited to these reasons as well: "The Court has further examined the type of circumstances outlined in Article 6.1 as permitted reasons for dissociation. . . . The Court finds that considering . . . the language of the Partnership Agreement itself, the applicability of the buyout calculation in Article 6.1 is limited to those enumerated four (4) reasons for dissociation, which did not occur in this case." *Id.* (emphasis added). Put more simply, Judge McLaughlin found that because there were only four sets of circumstances allowing for "rightful" withdrawal, there were also only four sets of circumstances in which the buyout provision could be triggered.

Of course, this Court has since found the contrary—that Article 6.1 is not limited to "those enumerated four (4) reasons for dissociation." *SADC*, 224 P.3d at 1074-80; 2007 R. 2309-11. Thus, the very reason Judge McLaughlin stated he was limiting the buyout to just the enumerated medical-theological reasons—*i.e.*, because they were the only "permitted reasons for dissociation"—was entirely removed. As such, a reversal as to one was a reversal as to the other.

St. Al's nonetheless maintains that Judge McLaughlin intended his decision as an affirmation that St. Al's "dissociated pursuant to its power granted by RUPA." Cross-Respondents' Brief at 3. But whether RUPA applies or not does not change the analysis here, since RUPA is, by its own terms, nothing more than a contractual gap filler. RUPA states clearly that except in a few very specific instances, "relations among the partners and between the partners and the partnership are governed by the Partnership Agreement." I.C. § 53-3-103 (emphasis added); *see also Horne v. Aune*, 130 Wash. App. 183, 121 P.3d 1227, 1235 (Wash. App. 2005) ("RUPA is a 'gap filler' in that it only governs partnership affairs to the extent not otherwise agreed to by the partners in the Partnership Agreement."). Thus, if the Partnership Agreement states that the buyout upon any withdrawal is to be limited the departing partner's capital account—as is the only possible interpretation in the wake of this Court's *SADC* decision—then RUPA would dictate that this language controls.

Finally, St. Al's argues that Judge McLaughlin's policy reasons concerning limiting the buyout to the four "enumerated reasons" in Article 6.1 are sound. Yet this again ignores that Judge McLaughlin specifically found that these policy rationales justified not just limiting the buyout to the "four enumerated reasons," but also why "rightful" dissociation should be limited to these same reasons:

> The Court has further examined the type of circumstances outlined in Article 6.1 as permitted reasons for dissociation. Each of these circumstances were subject to changes in law or medical-theological circumstances of the Hospital partners that could require that hospital partner to dissociate quickly in order to avoid substantial financial harm to the entire hospital organization based upon this partnership agreement. Because a quick dissociation might have significant financial consequences for the partnership due to the debt associated with this new technology at the time of formation of the partnership, a reduced "buyout" based upon the four (4) enumerated reasons for dissociation would allow MRIA to continue with the hospital partner's participation and significant debt load issues for the partnership. The delay in payment set forth for payment in Article 6.2 is consistent with the intent of Article 6.1 as outline above and further demonstrates that all of these provisions were based upon the four enumerated reasons for withdrawal as outlined in Article 6.1.

2007 R., 2310 (emphasis added). In other words, according to Judge McLaughlin, these policy concerns served as both the reason why a party should only be able to "rightfully" withdraw for the enumerated medical-theological circumstances and why the buyout should be limited to these same circumstances. *Id.* As a result, St. Al's argument ironically serves as further proof that this Court's reversal of Judge McLaughlin's decision on dissociation is also inherently a reversal as to his decision on the buyout.

In short, St. Al's cannot pick up one end of the stick without picking up the other. By convincing this Court that it could "rightfully" dissociate for reasons other than those enumerated in Article 6.1, it was also implicitly admitting that the buyout therein applied to reasons other than those enumerated in Article 6.1. And given that St. Al's does not dispute that the correct amount of the buyout, if it were to be applied, should be $863,040, this Court should reverse Judge Wetherell's decision awarding St. Al's $4.6 million, and remand with instructions that St. Al's be awarded $863,040 instead.

II. ST. AL'S ARGUMENTS RELATED TO INTEREST ARE ERRONEOUS.

A. St. Al's Pre-Judgment Interest Arguments Are Difficult to Follow.

St. Al's next discusses the issue of interest. Cross-Respondents' Brief at 5-10. It starts its arguments off with an odd exchange in which it reiterates a surprisingly underdeveloped argument from its original Appellants' Brief that pre-judgment interest should be awarded as of 2004, and then in a footnote tries suggest that MRIA has "implicitly conceded" an argument concerning this interest. *Id.* at 5. MRIA has done no such thing—a fact which becomes obvious once the extraordinarily confusing phraseology of that footnote is accounted for. St. Al's statement that it would be "entitled to accrued interest if [it] were awarded statutory interest" from 2004 pursuant to RUPA is a redundancy in terms: of course a party who is awarded interest would then be entitled to interest, in the same way that someone handed a banana will then have a banana. The problem is that St. Al's is not entitled to any accrued "statutory interest" in the first place, for reasons MRIA has repeatedly made clear, including the law-of-the-case doctrine and the fact that the Partnership Agreement specifically disallows interest. *See* Respondents' Brief at 80-81; R., 3314-23; *see also* R., 4701-02; Ex. 4023 at § 6.2.

As to the latter argument, MRIA argued both below and during this appeals process that the contract between the parties unambiguously states that St. Al's departing share is to be "without interest." *Id.* St. Al's has <u>never</u> articulated a legitimate argument why this binding contractual language should be ignored. As to the former argument—that St. Al's argument is barred by the law-of-the-case doctrine—MRIA argued below that when Judge McLaughlin awarded St. Al's its departing partner share, he did so without awarding interest. *See* R., 3316-18; 2007 R., 2306-13. Critically, MRIA also proved that St. Al's did not appeal Judge McLaughlin's choice not to award interest. *Id.* Moreover, unlike Judge McLaughlin's decision concerning the buyout amount, this Court's *SADC* decision did not even arguably disturb this finding. As such, MRIA argued below that St. Al's arguments related to prejudgment interest from RUPA were barred by its failure to appeal this issue previously. *Id.*; *see also Bouten Const. v. H.F. Magnuson Co.*, 133 Idaho 756, 762, 992 P.2d 751 (1999) ("since the issue was not raised . . . to the Court of Appeals on the first appeal, it will not be considered by this Court.").

In short, MRIA has challenged St. Al's attempts to obtain prejudgment interest at every turn. Any intimation that this issue has been conceded is little more than wishful thinking.[1] Indeed, the reasons that MRIA posited below for why St. Al's should not receive prejudgment interest, and the reason Judge Wetherell refused to grant prejudgment interest, are entirely solid, and should be upheld.

B. St. Al's Interest Arguments Ignore the Plain Language of Idaho Statutes.

St. Al's mostly ignores the two main arguments presented by MRIA in its Cross-Appellants' Brief as to why the prior judgment was vacated. As a reminder, the first of those arguments is that this Court's findings as to Article 6.1 of the Partnership Agreement also implicitly reversed the departing-partner judgment in favor of St. Al's, as discussed above. Assuming that is true, St. Al's would not be entitled to any interest, because it would never have had (and even today would not have) an accurate judgment upon which to base post-judgment interest. Critically, St. Al's does not contest in its Cross-Respondents' Brief that if MRIA is correct as to this contention, St. Al's would have no claim to any interest.

Second, St. Al's only nominally deals with the fact that when this Court remanded this matter in 2009, it stated it was "vacat[ing] the judgment"—not part of the judgment, but the

[1] To the extent that St. Al's means to implicate any issues related to offset with this strangely-worded footnote, MRIA notes that all of its arguments as to the order of the offset and interest, as described below, would apply regardless of when interest began to accrue. Indeed, this would be especially true in the context of pre-judgment interest, since even the cases cited in St. Al's Cross-Respondents' Brief make clear that the widely-accepted rule is "interest on the balance"—*i.e.*, offsetting and then applying interest—when, as here, the pre-judgment interest and the offsetting judgment relate to the same subject matter. *Indu Craft, Inc. v. Bank of Baroda*, 87 F.3d 614, 619 (2d Cir. 1996).

entire judgment. *SADC,* 224 P.3d at 1090. Obviously, if there is no judgment, there can logically be no post-judgment interest. St. Al's again drops a footnote to deal with this thorny issue, and therein half-heartedly contends that other jurisdictions have sometimes granted retroactive interest on judgments which are vacated and then reinstated. Cross-Respondents' Brief at 8. The problem with the cases cited by St. Al's is that none of them deal with Idaho Code § 28-22-104, in which the Idaho legislature specifically stated that a judgment was necessary for post-judgment interest: "The legal rate of interest on money due on the judgment of any competent court…" (emphasis added). Indeed, both federal cases in St. Al's footnote are by their very language based on FED. R. APP. P. 37, a rule which explicitly allows for the possibility of post-judgment interest even when a judgment is reversed: "If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest." (Emphasis added.) *See also, Indu Craft*, 87 F.3d at 620-21 ("This [Federal] rule [37(b)] 'gives appellate courts discretion to decide the issue on a case-by-case basis.'"); *DeLong Equip. v. Wash. Mills Electro Minerals*, 997 F.2d 1340, 1341-42 (11th Cir. 1993) (explaining that the power to award interest to a reinstated judgment comes from Rule 37). Critically, Idaho does not have an analogous provision in its Appellate Rules.[2] Similarly, the California case cited by St. Al's does not deal with how its holding can be squared with a statute like I.C. § 28-22-104. *See generally Munoz v. City of Union City*, 173 Cal. App. 4th 199 (2009).

[2] Or at least MRIA has been unable to locate one, and MRIA assumes that if St. Al's could have found one itself, it would have brought it to this Court's attention.

As such, St. Al's is asking this Court to do nothing less than read language into I.C. § 28-22-104 which simply does not exist, and is doing so based mostly on federal cases which were interpreting a rule which specifically allowed the courts involved to award interest on vacated judgments. Indeed, if anything, the acknowledgement in the federal cases St. Al's cites—*Indu Craft* and *DeLong Equip.*—that the authority for retroactive interest explicitly came from FED. R. APP. P. 37 demonstrates what would need to exist in Idaho statutes or rules in order for this Court to rule as St. Al's urges, but what Idaho clearly lacks. And short of the language found in that rule, this Court cannot simply append non-existent exceptions into Idaho statutes because St. Al's thinks the legislature got it wrong. *See, e.g., Martin v. State Farm Mut.*, 138 Idaho 244, 247, 61 P.3d 601 (2002) ("A cardinal rule of statutory construction is that . . . courts are constrained to follow [a statute's] plain meaning, and neither add to the statute nor take away by judicial construction.").

C. Should Interest Be Awarded to St. Al's, this Court Should Require an Offset First.

St. Al's next argues that it would work a "manifest injustice" to it if this Court ordered that the setoff should be effectuated and then the interest applied. Cross-Respondents' Brief at 8. This statement is legally incorrect and, more than that, demonstrates an incredible amount of tone-deafness. As to the former, as MRIA pointed out in its Cross-Appeal, the offset is by definition proof positive that St. Al's was never entitled to the gross amount to begin with. *See Yim K. Cheung v. Wing Ki Wu*, 955 A.2d 746, 747 (Me. 2008) (claims "must be subtracted before interest is applied. Otherwise, the plaintiff would collect interest on the part of the judgment the court has determined should not be awarded to him or her."). And obviously, it could hardly be an "injustice" for St. Al's to be denied interest on money that it was never entitled to in the first place. As to the latter, it is worth remembering that St. Al's is the party who has twice been found to have betrayed its partners so that it could secretly line its own pockets with ill-gotten gains. The idea that any decision related to the interest on its departing share related to that same partnership could at this point work a "manifest injustice" on St. Al's is absurd on its face.

St. Al's next argues that this Court should ignore cases like *Thomas & Betts v. A & A Mechanical*, 2008 WL 2696877 (Ky. Ct. App. 2008), in favor of others which St. Al's argues are more analogous here. Yet the cases St. Al's has chosen are so factually disparate from the matter at hand that their usefulness is minimal. For example, St. Al's cites *Wm. R. Clarke Co. v. Safeco Ins.*, 78 Cal. App. 4th 355 (2000). But that case, by its very language, was based on a California statute which appears to compel interest being applied first: "Clarke's analysis is supported by section 695.220 which provides, as relevant, that '[m]oney received in satisfaction of a money judgment...is to be credited...against the accrued interest that remains unsatisfied,' and it is only the 'remaining money' that can then be 'credited against the principal amount of the judgment...'" *Id.* at 360. No such similarly worded statute exists in this case.

But perhaps more important is the fact that, unlike the case at bar, the offset in *Clarke* was a result of an insurance company waiting for some time to bring up its offsetting rights because in order to do so, it would have had to have taken contradictory positions before the court, and it wanted to see whether its first position would result in a better outcome. *Id.* at

357-60. This irked the Court so much that said it was issuing its decision as a quasi-punishment for the insurer's failure to act in good faith: "we agree with the trial court that the manner in which Safeco exercised its right to an offset was not equitable. It follows that we find no abuse of discretion by the trial court [applying interest before the offset]." *Id.* at 361.

The other case discussed by St. Al's, *Cardinell v. Allstate Insurance*, 302 A.D.2d 772, 773 (N.Y. App. Div. 2003), is similar. In *Cardinell*, like *Clarke*, the case turned on the intent and language of a statute which has no application here—one which once again was meant to compel insurers to pay valid claims in a timely manner. Indeed, the *Cardinell* Court, just as the *Clarke* Court, expressed obvious agitation that the insurer had waited so long to pay its claim. *Id.* As a result, it found that interest should be applied before the offset so as to act as a "punitive" measure:

> In our view, both the language of Insurance Law § 5106 (a) and 11 NYCRR 65.15 (h) (1) and the underlying rationale behind same compel the conclusion that Supreme Court appropriately applied the setoff after calculating interest. First, under the express terms of the statute, the failure to pay benefits within 30 days renders benefits "overdue" and all overdue payments incur interest at the rate of 2% per month. . . . More importantly...the statute and regulation are punitive, with severe penalties, to encourage prompt adjustments of claims. Here, applying the setoff before calculating interest, thereby eliminating any recovery whatsoever to plaintiff, would frustrate this essential purpose.

Id. at 773-74 (internal quotations and citations omitted; emphasis added).

As is obvious, neither the facts nor the law at issue in either *Clarke* or *Cardinell* are extant here. Unlike these two cases, the case at hand involves no statute mandating that the offset take place after the interest accrued. Moreover, none of the underlying policy questions at issue in *Clarke* and *Cardinell* are relevant here, both of which revolved around punishing insurance companies for bad faith payment of claims. In sum, neither case is particularly instructive here.

To the contrary, the case most similar by far to the one at hand is *Thomas & Betts*. As explained in detail in MRIA's Cross-Appellants' Brief, that case is extraordinarily similar to the one at hand, in that it: (1) involved an appeal; (2) involved a remand; (3) involved the same two parties; (4) involved a re-trial; and (5) involved two judgments based on the same nucleus of common fact, rendered several years apart due only to the fact of the appeal. Conversely, neither of the two cases made the centerpiece of St. Al's Cross-Respondents' Brief come anywhere close to this. Specifically: (1) neither *Clarke* nor *Cardinell* involved an appeal that resulted in a remand; (2) the judgments in *Clarke* were not even between the same two parties; (3) neither *Clarke* nor *Cardinell* involved a re-trial; and (4) in neither *Clarke* nor *Cardinell* were there judgments separated by a large amount of time due to an appeal.

Of course, St. Al's makes some perfunctory efforts to distinguish *Thomas & Betts* factually from the case at hand. Yet its explanation for that case is confusing at best. In particular, St. Al's argues that the case at hand is different than *Thomas & Betts*, since MRIA did not prove its "legal entitlement to any money until" the second trial. Cross-Respondents' Brief at 10. This is misleading: MRIA proved a legal entitlement in the first trial, and obtained an offset in 2007, but the resulting judgment was reversed due to errors by the trial court. This is critical, since as *Thomas & Betts* makes clear, it is a "well-established legal principle that a judgment entered after remand should place each party in the position it would have been in had the trial court's original action been correct." *Id.* at **2-3. St. Al's attempts at distinguishing this highly germane case accordingly fail.

III. THERE ARE QUESTIONS OF FACT AS TO WHETHER THE PARTNERSHIP AGREEMENT IS FOR A TERM OR PARTICULAR UNDERTAKING.

St. Al's next addresses MRIA's arguments related to the partnership being for a term or particular undertaking. Cross-Respondents' Brief at 10-18. In essence, St. Al's asks this Court to look at certain provisions of the Partnership Agreement in a vacuum rather than interpreting it as a whole in light of all of its provisions. Based on this myopic view of the Agreement, St. Al's insists that it unambiguously provides that the term of the partnership is indefinite. St. Al's argument fails. The agreement is not unambiguously indefinite.

This Court has stated that when determining the meaning of a contract, it must view the contract as a whole. *Daugharty v. Post Falls Highway Dist.,* 134 Idaho 731, 735, 9 P.3d 534, 538 (2000). It has also stated that to determine whether a contract is ambiguous, it must determine whether the terms of that contract are reasonably susceptible to conflicting interpretations. *City of Chubbuck v. City of Pocatello,* 127 Idaho 198, 201, 899 P.2d 411, 414 (1995). Here, the Partnership Agreement is at least ambiguous as to the duration of the partnership and whether the partnership was formed for a particular undertaking[3] because the provisions of the Agreement addressing this topic are reasonably susceptible to conflicting

[3] In this instance the term of the partnership and the undertaking are interrelated. As set forth in MRIA's Cross-Appellants' Brief, the undertaking is the management of the limited partnership, which has an express term.

interpretations. Therefore, the interpretation of the Agreement was a question of fact that should have been presented to the jury. *Campagna v. Parker*, 116 Idaho 734, 737, 779 P.2d 409 (1989).

As set forth in MRIA's Cross-Appellants' Brief, at issue is the interplay of several sections of the Partnership Agreement. To recap, the expressly-stated purpose of the MRIA partnership was to "organize and promote an Idaho limited partnership" and to operate and manage medical diagnostic devices, including a magnetic resonance imaging device. Ex. 4023 at § 1.6.[4] The Agreement further provides that when formed, the limited partnership(s) shall have the same purpose as MRIA.[5] *Id.* Article 1.1, which is entitled "Effective Date and Term," provides in subarticle 1.1.1 that if the limited partnerships are not formed by December 31, 1985, MRIA will end on that date. In turn, subarticle 1.1.2 provides that if the limited partnerships are formed, MRIA shall end when the "business of the partnership" is completed.

As St. Al's admits, the key phrase is the "business of the partnership." That phrase is not expressly defined in the Partnership Agreement. Indeed, there is a question of fact as to the

[4] Article 1.6, which concerns the purpose of the partnership, is itself ambiguous. St. Al's, in its Cross-Respondents' Brief, only cites one of the three paragraphs in the Article. The first paragraph makes clear that the purpose of the partnership is, among other things, to acquire and operate imaging devices. *Id.* The second paragraph, which St. Al's conveniently overlooks, provides that the partnership will "promote and organize an Idaho Limited Partnership" to engage in the purpose described in the first paragraph—acquire and operate imaging devices. *Id.* At a minimum, the interrelation between paragraphs 1 and 2 of Article 1.6 create an ambiguity as to whether the purpose of the partnership is to own and operate imaging devices on its own or to do so through a limited partnership.

[5] In furtherance of that purpose, a magnetic resonance imaging device was acquired and placed on SARMC's campus. Ex. 4021. The device was owned and operated by MRICI, the limited partner contemplated by the agreement. Tr. 171:6-24; Ex. 5027. MRIA managed the business and affairs of MRICI and later MRIM. Tr. 171:6-24.

meaning of that phrase within the context of the partnership. This question of fact is demonstrated by the parties' disagreement as to the meaning of the phrase.

St. Al's contends that the phrase does not refer to the management of the limited partnerships but instead refers to the MRIA partnership itself. The problem with St. Al's circular argument is that it does not answer the question as to what that business is. In that regard, St. Al's ignores that the business of MRIA is the management of the limited partnership. This is made clear by the fact that Article 1.1.1 provides that if the limited partnership contemplated by the Partnership Agreement was not formed by December 31, 1985, the MRIA partnership would end on that date. Likewise, Article 1.6 provides that the "Partnership intends to promote and organize an Idaho limited partnership . . . [that shall have] the same purpose as this Partnership." *Id.* at § 1.6.

Thus, keeping in mind that the Partnership Agreement must be read as a whole, the "business of the partnership" phrase used in Article 1.1.2 must be read in light of Articles 1.1.1 and 1.6. Those two articles express the intent that the business of the partnership is the management of the limited partnership formed pursuant to the Partnership Agreement. If that were not the case, why would the partnership end if the limited partnership was not formed by December 31, 1985? The only answer is that the MRIA partnership, pursuant to the terms of the Partnership Agreement, is inextricably intertwined with the limited partnership referenced in the Agreement. Accordingly, although the phrase "the business of the partnership" is not defined in the Agreement, Article 1.1.2, when read in conjunction with Articles 1.1.1 and 1.6, elucidate that the "business of the partnership" is the management of the limited partnership.

Consequently, it is at least ambiguous as to whether the MRIA partnership's term is coexistent with the limited partnership. Where Article 1.1.1 provides a date certain on which the partnership will end if the limited partnership is not formed, Article 1.1.2 sets forth the date on which the partnership will end if the limited partnership is formed. It provides in relevant part that "[i]f the Limited Partnership contemplated by Article 1.6 is formed and the limited partnership interests sold . . . on or before December 31, 1985, then the term of this Partnership shall end on the date which is within a reasonable time after the business of the Partnership is wound up and dissolved under Article 10." That is, if the limited partnership is formed, the partnership will not terminate on December 31, 1985, but will terminate when the "business of the Partnership" is wound up and dissolved under Article 10. Since there is at least a question of fact as to whether the "business of the Partnership" is the management of the limited partnerships, there is also a question of fact as to whether the duration of the Partnership is coextensive with the duration of the limited partnerships. In other words, because MRIA's purpose under the Agreement is to manage the affairs of the limited partnerships, and because the limited partnerships have an expiration date,[6] the business of the MRIA partnership ends when its undertaking—managing the limited partnerships—ends.[7]

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[6] St. Al's has not disputed that the limited partnerships have express termination dates.

[7] St. Al's argues that the term is not definite because MRIA manages more than one limited partnership. St. Al's, however, disregards that although each limited partnership is a separate undertaking, that does not mean that the partnership will not end when the undertakings are completed. Indeed, St. Al's has not cited to any case law stating that there cannot be more than one undertaking. Moreover, the law does not require that the undertaking "must be capable of accomplishment at some [definite] time." *Girard Bank v. Haley,* 460 Pa. 237, 332 A.2d 443, 447 (1975). Although the exact date of accomplishment need not be specified or even ascertainable

Moreover, St. Al's disregards the extrinsic evidence supporting MRIA's position because, according to St. Al's, the Partnership Agreement is an integrated contract. At the outset, it should be noted that the Partnership Agreement does not contain an integration clause. And regardless, this Court has held that extrinsic evidence may be considered to interpret ambiguous provisions of a contract. *Dr. James Cool, D.D.S. v. Mountainview Landowners Co-op.*, 139 Idaho 770, 773, 86 P.3d 484 (2004). In that regard, this Court has noted that when determining the parties' intent, the Court considers not only the contract as a whole, but also "the circumstances under which it was made, the objective and purpose of the particular provision, and any construction placed upon it by the contracting parties as shown by their conduct or dealings." *Triad Leasing & Fin. v. Rocky Mountain Rogues,* 148 Idaho 503, 513, 224 P.3d 1092 (2009). Furthermore, other courts have recognized that "in the absence of an express term in a contract fixing a duration, a court may inquire into the intent of the parties." *Hooker Chemicals & Plastics v. International Minerals & Chem.*, 456 N.Y.S.2d 587, 589 (N.Y. App. Div. 1982).

Therefore, because the "business of the Partnership" is, at worst for MRIA, not clearly defined by the agreement, nor is there an express provision fixing the duration of the partnership, extrinsic evidence may be considered. Consequently, the fact that the attorney for St. Al's that drafted the agreement wrote to the parties stating that they need not worry about the absence of a "sunset clause" because "the life of this [MRIA] partnership will <u>undoubtedly</u> be determined by the terms of the lease and the limited partnership" demonstrates that the term of the partnership is

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at formation, some date for accomplishment must be *conceivable*. *Id.* Here it is conceivable that the partnership will end when its businesses, which have fixed durations, end.

the term of the limited partnerships. Ex. 12 at 2 (emphasis added). The same is true of the fact that on October 11, 1999, St. Al's board of directors met and discussed the MRIA partnership and agreed to "[e]xtend[] the term of the MRI partnership agreement to 12/31/23." Trial Ex. 4109 at 1 (emphasis added).

Furthermore, the reference to Article 10 in Article 1.1.2 does not make the term indefinite. As found in *Congel v. Malfitano*, 877 N.Y.S.2d 443, 445 (N.Y. App. Div. 2009), the partnership agreement has a definite term because "[w]hile the partnership agreement does not specify a time limit, the parties nevertheless expressed their intention that the duration of the partnership was to be limited by providing that it shall dissolve upon an election of a majority of the partners." Thus, rather than creating an indefinite term, Article 10 creates a definite term in that the partnership will terminate upon the completion of the business of the partnership and a vote of the partners.

Article 10 also creates an ambiguity because Article 10.1, itself, is ambiguous. As set forth in MRIA's Cross-Appellants' Brief, Article 10.1 could be interpreted to be a provision for the parties to use to end the partnership before the end of the term, with the understanding that without that vote it would otherwise last for the term set out in Articles 1.1.2 and 1.6 (the term of the limited partnership). Alternatively, the reference to Article 10 could simply mean that as part of the winding up process, the partners needed to perfunctorily join together and affirm that the term of the partnership had ended. These interpretations, unlike St. Al's construction, do not ignore the term language in Articles 1.1.1, 1.1.2, and 1.6.

Given that these interpretations are reasonable, the trial court's finding that its interpretation that the duration of the partnership is indefinite is the only possible interpretation is error. Reasonable minds could differ on whether the partnership was for a term (or an undertaking) and therefore, the issue should have been presented to the jury. Consequently, the trial court's decision to decide this issue as a matter of law must be reversed.

IV. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT AGAINST MRIA'S CLAIM THAT ST. AL'S WITHDRAWAL BREACHED THE PARTNERSHIP AGREEMENT.

The jury should have been permitted to hear MRIA's common-law claim that St. Al's breached the Partnership Agreement when it withdrew from the MRIA partnership. Contrary to St. Al's assertion otherwise, the Supreme Court did not reject this claim on the previous appeal. Rather, the Supreme Court's decision was aimed exclusively at a statutory claim that does not preclude a common-law theory of liability.

As discussed above, Article 6.1 of the Partnership Agreement provides a handful of enumerated medical-theological circumstances related to withdrawal. In the previous trial of this action, MRIA asserted that St. Al's was in violation of the RUPA provision I.C. § 53-3-602, making wrongful the breach of an "express" provision of the partnership agreement, because St. Al's had withdrawn for a reason other the one of the enumerated circumstances. During the first appeal, this Court asked whether Article 6.1 was an "express" provision, remarking:

> Idaho Code § 53-3-602(b)(1) provides that a dissociation is wrongful if it is "in breach of an express provision of the partnership agreement." The statute does not simply provide that dissociation is wrongful if it is in breach of the partnership agreement, or if it is in breach of a provision in the partnership agreement. It is only wrongful if it breaches an *express* provision of the partnership agreement.

SADC, 224 P.3d at 1077 (some emphasis added). Noting that Article 6.1 was subject to multiple interpretations and did not expressly limit withdrawal to the enumerated medical-theological circumstances, the Supreme Court held that this did not constitute wrongful withdrawal under RUPA's I.C. § 53-3-602(b)(1).

Significantly, in noting that "the statute does not simply provide that dissociation is wrongful if it is in breach of the partnership agreement," the Supreme Court was careful to distinguish between statutory violations of RUPA, and common-law contractual violations. The Supreme Court was not asked to, and did not, hold that St. Al's withdrawal was in conformity with the contract, but merely that Article 6.1 was not sufficiently "express" that violation thereof could violate RUPA. Significantly, the Supreme Court did not rule on the ultimate meaning of Article 6.1, but merely noted that it was ambiguous and subject to several different interpretations, 148 Idaho 486-87, thus putting the ultimate meaning of Article 6.1 squarely into a jury's hands. *See Afton Energy, Inc. v. Idaho Power Co.*, 122 Idaho 333, 340-41, 834 P.2d 850, 857-58 (1992) (if an agreement or contract is ambiguous, the resolution of any ambiguity raises a question of fact for the jury).

The district court incorrectly removed MRIA's common-law breach of contract claim from the jury's hands when it held that RUPA displaced the common law. Essentially, the district court ruled that there could never be a breach of the language of the partnership agreement directed at dissociation if there was any ambiguity or lack of exact specificity in the term, because under such circumstances that term of the partnership agreement could never qualify as "express" under RUPA.

This is not, as St. Al's asserts, a "word game," based on the wrongs "withdrawal" and "dissociation." MRIA does not hinge its argument on the meaning of any particular word in RUPA. Rather, it is simply noting that this Court has repeatedly held that such displacement of common law requires specific legislative intent, as shown by explicit language within the statute which expressly states that it is abrogating the common law. *See, e.g., Chenery v. Agri-Lines*, 115 Idaho 281, 285, 766 P.2d 751, 755 (1988); *Moon v. Bullock*, 65 Idaho 594, 607, 151 P.2d 765 (1944); *Cox v. St. Anthony Bank & Trust*, 41 Idaho 776, 242 P. 785, 786 (1925). In this regard, St. Al's argues that RUPA "necessarily displaced" the common law because it created a right to withdraw where none existed before. Yet this is not even remotely the test for abrogation of the common law. Significantly, contrary to St. Al's argument, the common law and statutory law can and do sit neatly together, as RUPA expressly provides that it exists "in addition to any other obligation of the partner to the partnership or to other partners." I.C. § 53-3-602(c).

Indeed, St. Al's interpretation of RUPA would render Article 6.1, and any other ambiguous provision of a partnership agreement directed at dissociation, completely meaningless and unenforceable. The legislature has never indicated any intent that RUPA should entirely displace the common law. Put another way, that Article 6.1 was not sufficiently express to put it under the purview of RUPA's I.C. § 53-3-602(b)(1) does not simply make this provision disappear. A jury should have been permitted to work out which of the interpretations highlighted by the Supreme Court was the correct interpretation, and then to determine whether

St. Al's withdrawal from the MRIA partnership constituted a common-law violation of the partnership agreement.

V. THE JURY SHOULD HAVE BEEN ALLOWED TO CONSIDER MRIA'S DAMAGE CLAIMS RELATED TO IMI EAGLE.

St. Al's makes several arguments in support of withholding evidence of damages related to IMI Eagle from the jury. None of those arguments is persuasive.

A. MRIA Should Have Been Allowed to Claim Eagle-Related Damages Because St. Al's Usurped MRIA's Opportunity to Partner with IMI in Eagle.

St. Al's addresses MRIA's first Eagle argument last—that MRIA would have went with IMI to Eagle but for St. Al's usurpation of MRIA's opportunity to partner with IMI—in apparent hopes of minimizing its importance. Critically, in its brief, St. Al's does not dispute the evidence submitted by MRIA that St. Al's usurped MRIA's opportunity to partner with IMI, nor did it submit contrary evidence. Instead, St. Al's erroneously argues that MRIA "offered no evidence to suggest that, in the but-for world where MRIA would partner with IMI, this hypothetical new partnership would have opened an Eagle facility." Cross-Respondents' Brief at 26. Contrary to St. Al's argument, there is substantial evidence that the partnership would have opened a facility in Eagle. Undeniably, the best evidence of this is the undisputed fact that IMI did indeed open a facility in Eagle. Tr., 4551:25-4553:8; Ex. 5089. Additionally, there is strong evidence that MRIA also desired to open a facility in Eagle. Tr., 3908:5-3910:16. Such evidence is more than sufficient for a jury to conclude that but for St. Al's usurpation of MRIA's opportunity to partner with IMI, MRIA would have gone with IMI to Eagle.

While St. Al's, for obvious reasons, paid short shrift to the above argument, it instead focused its first argument on its flawed contention that MRIA's Eagle opportunity was not usurped because MRIA never tried to go into the Eagle market. Cross-Respondents' Brief at 23. Yet this argument ignores that the analysis is not whether MRIA was actually on the brink of opening an Eagle facility, but rather, whether an Eagle MRI facility was within the scope of MRIA's business. *See Lifshutz v. Lifshutz,* 199 S.W.3d 9 (Tex. App.–San Antonio 2006); *Harestad v. Weitzel*, 242 Or. 199, 536 P.2d 522 (1975). It is undisputed that having an MRI center in Eagle was within the line of MRIA's business, and one that it had actually discussed with St. Al's. Tr., 3905:5-3910:16.

Indeed, St. Al's also ignores the fact that it was St. Al's that prevented MRIA from expanding into both Eagle and Meridian until it was too late for MRIA to do so. There was not only substantial, but undisputed, evidence that St. Al's strongly opposed the growth of MRI Mobile (Tr., 1485:12-1489:7, 2073:20-2075:23, 3916:7-3919:5; Ex. 4221 at 2-4), the entity that would have pursued the Meridian and Eagle opportunities. Tr., 3908:21-25. At an MRIA board meeting that occurred shortly after Mobile had requested to pursue opportunities in Meridian, Eagle, and with Treasure Valley Hospital, St. Al's COO, Cindy Schamp, stated in response to a question concerning whether St. Al's was opposed to the growth of Mobile, that St. Al's "is not interested in perpetuating the growth of MRI Mobile. It is not consistent with what [St. Al's] is trying to achieve with their ten year growth plan." Ex. 4221 at 3-4. Now, having usurped the opportunity, St. Al's claims it never prevented MRIA from going to Eagle because it only had two of 10 votes. Cross-Respondents' Brief at 23. But St. Al's ignores the undisputed evidence that, while only having two votes, St. Al's knew it had the practical ability to control the partnership because MRIA had told it that it would not undertake any action that its partner, St. Al's, opposed. Tr., 198:2-201:22 (Dr. Prochaska tells Ms. Bruce, "Sandy, we always do what the CEOs want. All you have to do...is tell the board what you want."), 182:11-183:4, 3905:5-3917:2.[8] In fact, MRIA was not passive as St. Al's suggests. Instead, it was heeding the wishes of its partner, St. Al's, and by the time St. Al's withdrew and MRIA was free to allow Mobile to expand into areas like Eagle and Meridian, it was no longer in a position to be able to pursue those opportunities due to St. Al's breaches of fiduciary duty. *See* MRIA's Respondents' Brief at Part I.A.1.b & Part I.B. Thus, there is substantial evidence that St. Al's usurped MRIA's opportunity in Eagle.

B. The Eagle-Related Damages Are Not Too Remote Because They Were Siphoned From Meridian.

St. Al's argues that the fact that Eagle profits were siphoned from the Meridian profits is an "entirely new justification" for Eagle profits. This is not true. Evidence was presented at trial through MRIA's expert that once IMI's Eagle operation opened in 2007, IMI's business at Meridian/Magicview was reduced by half while the Eagle location picked up approximately the amount of business lost by the Meridian location. Ex. 5067. There was also evidence of the reason for this—that IMI Meridian started with two magnets, but that when IMI Eagle opened, one of those magnets was moved to Eagle. Tr., 4549:24-4550:23. From this evidence, the jury

[8] A great example of this deference to St. Al's is demonstrated by Mobile's request to do work for Treasure Valley Hospital. St. Al's opposed this work because Treasure Valley Hospital competed with St. Al's and because St. Al's opposed the work, Mobile did not pursue the opportunity. Ex. 4221 at 2-5; Tr. 3913:19-3917:20.

easily could have inferred that Eagle's profits were nothing more than Meridian profits in a new location. In short, this argument is not new, but was presented below through expert evidence.

St. Al's also argues that the theory is unsound because "it is not supported by citation to any factual or expert testimony." Cross-Respondents' Brief at 25. This is false. As cited above, the theory was presented through unrebutted factual evidence from an expert. MRIA's expert, Bruce Budge, analyzed the profits of Meridian and Eagle and his Exhibit 5067 shows that as IMI Eagle was opened, it gained profits in the approximate amount that IMI Meridian lost profits. *See also* Tr., 4549:24-4550:23. The jury could easily take this evidence as proof that when one of IMI Meridian's two MRI magnets was moved to IMI Eagle when it opened that IMI Eagle simply siphoned profits from IMI Meridian. It appears that St. Al's is arguing that MRIA's expert should have made this conclusion for the jury, but St. Al's failed to cite to any authority for the proposition that an expert rather than a jury must make this conclusion from the evidence.

Therefore, MRIA should have been allowed to claim Eagle-related damages as those damages are not too remote because they were simply taken from Meridian. In other words, as stated in MRIA's Cross-Appellants' Brief, it would be illogical to cut off the damages related to the 2001 Meridian usurpation—which was found by both the jury and the trial court to have been unlawful—simply because IMI opened an office closer to these already-stolen patients in Eagle. Or, at the very least, it should have been an issue for the jury to consider.

C. *MRIA's Eagle Damages Do Not Run Afoul of* **Trilogy.**

St. Al's next makes the same argument it made in its Appellants' Brief with respect damages for Meridian—that the damages allegedly run afoul of this court's decision in *Trilogy*

Network Systems v. Johnson, 144 Idaho 844, 172 P.3d 1119 (2007). Rather than simply restating its response to that argument verbatim, MRIA incorporates the arguments made in its Respondents' Brief at 35-41, and provides a brief synopsis. In sum, *Trilogy* is inapposite because that case did not involve the taking of an opportunity to build a new facility where there would be a different cost structure and profit margin than any existing operations. Instead, *Trilogy* involved a situation akin to Center's claim for lost profits. *Id.* As MRIA's expert Budge explained, unlike the diverted scan calculation for Center's lost profits—which was able to draw from Center's preexisting cost structure and profit margins to arrive at the amount of damages—Mobile's claim was that it was prevented from opening a facility in Eagle, but there was no existing Mobile facility from which to derive a comparable cost structure and profit margin. Tr., 4545:15-4550:25, 4552:25-4554:6. Consequently, the most reasonable thing to do was to assume, as Budge did, that Mobile would have built a center in Eagle similar to that built by IMI (adjusted to include only MRI services). *Id.* Then, rather than speculating, Budge used the costs actually incurred by St. Al's and GSR to build and operate a facility. *Id.* From another perspective, the most credible way to determine what profits and costs would have been realized by Mobile's Eagle facility is to look at the best comparable facility for which data was available—IMI Eagle. Thus, borrowing IMI's actual operating numbers was not "speculative," since, unlike in *Trilogy*, MRIA demonstrated a reasonable—and the best available—correspondence between what its profit would have been and IMI's actual profit.

Dated this 10th day of October 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby that on the 10th day of October 2013, copies of the foregoing brief were served upon the following counsel as follows:

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